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OFFICE OF PETITIONS

Applicant: Ferrari et al.
Appl. No.: 09/987,427
Filing Date: November 14, 2001
Title: COSMETIC COMPOSITION COMPRISING A POLYMER PARTICLE DISPERSION
AND A PIGMENT DISPERSION
Attorney Docket No.: 05725.0996-00
Pub. No.: US 2002/0164297 A1
Pub. Date: November 7, 2002

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on January 2, 2003.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication was published using the a copy of the translated provisional application, not translated nonprovisional application, which is a material mistake.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹ The instant request does not identify a material mistake in the publication made by the Office:

The instant request alleges that the Office published a translation of the provisional application which is the wrong specification. On April 17, 2002, applicant filed two copies of the English translation of the specification filed in French. Each of the two translations include a certification that "[t]hat the attached is, to the best of RWS Group ple knowledge and belief, a true translation in the English language of the specification in French filed with the application for a patent in the U.S.A. on _____ under _____", additionally the specification placed in the center of the file and used for the publication includes a cover letter stating that it is a "Submission of English Language Translation of Provisional Application Under 37 CFR 1.52(d)(2)". While applicant argues that the Office published the wrong specification and is using the wrong specification as the originally filed specification, there is no indication in the application papers that the translations are different or that one over the other should have been used as the specification.

The error identified by applicant is not an Office mistake, which is apparent from the Office records as required by 37 CFR 1.221(b). However, in view of applicant's explanation, the other translation has been moved to the center of the file jacket and scanned into Office records as the copy of the application as filed.

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The applicant is advised that a “request for republication of an application previously published” may be filed under 37 CFR 1.221(a). Such a request for republication “must include a copy of the application in compliance with the Office’s electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i).” If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: 703-305-8568

The application is being forwarded to Technology Center 1600 to await further examination in due course.

The title has been changed to "Cosmetic Composition Comprising A Polymer Particle Dispersion and a Pigment Dispersion"

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Paul D. Part

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt